



Cincinnati Law Library News

A Monthly Newsletter from the Cincinnati Law Library Association

February 2008

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Court Denies Recovery by Second Mortgage Holder

By **Joseph B. Wells**

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Generally, under Ohio law, the first mortgage that is presented and recorded has preference over a subsequently presented and recorded mortgage. Thus, the priority of a mortgage is easily determined by reviewing the recording chronology. However, in circumstances where loan proceeds from a new loan are used to pay off a pre-existing lien, this general statutory rule can be overcome by the doctrine of equitable subrogation. In such situations, if the holders of any other liens on a property are not prejudiced, the court will apply the doctrine of equitable subrogation and allow the holder of the new loan to stand in the place of the previous lienholder.

seeking to invoke the doctrine has been negligent in its business transactions. However, in the recent decision of Washington Mutual Bank, FA v. Aultman, the Ohio Court of Appeals for the Second Appellate District, in a case from Champaign County, applied the doctrine of equitable subrogation even in the presence of a new lender's negligent conduct. The decision in Washington Mutual could evidence a growing minority application of the doctrine of equitable subrogation in Ohio.

Over the last several years, Ohio courts have rarely applied the doctrine of equitable subrogation, applying the doctrine in only a limited number of circumstances. The doctrine of equitable subrogation has been applied even more sparingly when the party



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March 1 Renewal

Don't forget to renew your membership by March 1! This will ensure your continued access to our remote resources like Fastcase.com and Hein Online. Is your firm looking for ways to save on legal research fees? Firm memberships provide all lawyers and staff with access to our resources for a discounted fee.



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Navigating your way through CFR Databases

Glenna Herald, Reference

The next time you need to use a copy of the *Code of Federal Regulations* you may be surprised to find this multi-volume set removed from the shelves of the Cincinnati Law Library.

If you mourn the loss of the CFR in print, dry your tears! The following information should help guide you through the thorny CFR labyrinth.



The best place to start your Administrative Law research is GPO ACCESS. According to GPO ACCESS the Code of Federal Regulations (CFR) is organized as

“the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation. Each volume of the CFR is updated once each calendar year and is issued on a quarterly basis.”

<http://www.gpoaccess.gov/cfr/about.html>

GPO Access allows searchers to browse or search-by keyword or citation-the CFR from 1996 to the most current version available.

<http://www.gpoaccess.gov/cfr/index.html>

When all else fails, read the directions. The GPO’s “Search Tips” link is quite helpful.

Another good resource for CFR research is Hein Online, available to our membership through our website. The Hein Online coverage begins from the CFR's inception, in 1938, and continues through 1984. Additional years will continue to be released in the future. The access point, from your desktop, to Hein Online starts here:

<http://www.hamilton-co.org/cinlawlib/resources/Default.asp>

Lexis also provides CFR documents. Like GPO ACCESS and Hein Online, Lexis allows you to search by keyword and by citation. To use Lexis, members need only to visit the computer lab in the library.

Searching for and finding relevant information from the Code of Federal Regulations should be easier using the above-mentioned databases. If, however, the migration to the electronic versions of the CFR causes you grief, please ask us for help. We will be happy to point you in the right direction.

In Washington Mutual, Washington Mutual's mortgage was given priority over a preexisting seller-financed mortgage on property owned by the Aultmans, who were in default of the Washington Mutual loan. In order to purchase the property, the Aultmans had obtained an initial mortgage loan from a bank, and also granted a mortgage on the property to the seller, Caldwell, for the remaining balance on the purchase price. Subsequently, the Aultmans refinanced with Washington Mutual, using some of the proceeds to pay off the initial bank mortgage and pocketing the excess proceeds. The Caldwell mortgage was not paid because the title company missed it. Ultimately, the Aultmans defaulted on the refinanced loan and a foreclosure action was filed. Both Caldwell and Washington Mutual claimed to have the valid first and best lien on the property. The trial court held that Caldwell's mortgage was first and Washington Mutual would receive only the balance after payment to Caldwell.

The Court of Appeals invoked the doctrine of equitable subrogation and held that Washington Mutual's mortgage had priority over Caldwell's mortgage, even though Washington Mutual's lack of awareness of Caldwell's mortgage was due to a defective title search by Washington Mutual. The court held that "Washington Mutual's failure to achieve first-lien position was due solely to the title agent's inadvertent failure to discover Caldwell's preexisting mortgage. Washington Mutual's negligence was a 'mere mistake,' and its failure to obtain first-lien position was not

due to the bank's failure to follow ordinary business practices to protect its interests."

Therefore, even though the court in Washington Mutual acknowledged negligence on the part of Washington Mutual, it ultimately held that equitable subrogation should be applied in this case, because "the application of equitable subrogation in this instance comports with the doctrine's purpose of providing relief from mistakes."

Joseph Wells joined Frost Brown Todd LLC in 2007 as an associate in the Litigation Department. He represents and advises clients in a wide range of litigation areas.

<http://www.frostbrowntodd.com/>

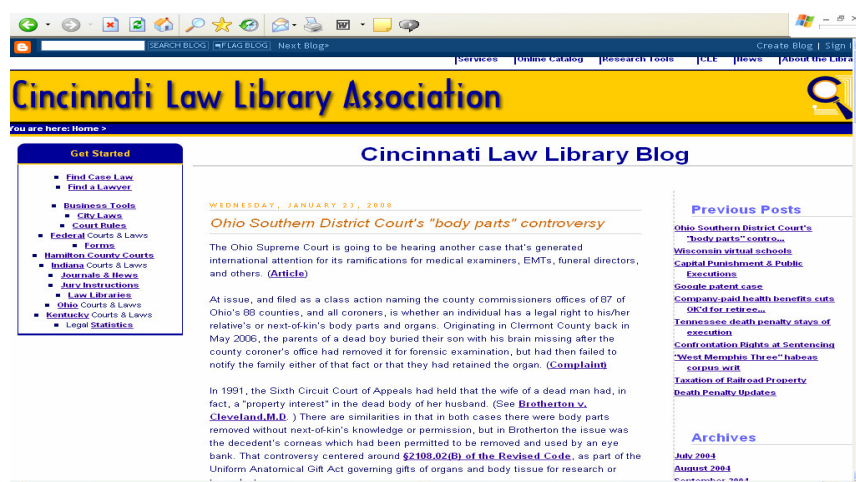


Kudos! CLLA LawBlog Selected by Library of Congress for Archiving

By Mary Jenkins
Law Library Director

The Library of Congress maintains a web archive of authoritative Legal Blawgs as part of its WebCapture project to preserve "born digital" materials. At LC's invitation, CLLA will take part in this endeavor, giving permission for the inclusion of our LawBlog as a "site of interest" in this selective content collection project to be made available to researchers. CLLA's LawBlog, maintained by Chuck Kallendorf, was created in 2004 and features not only recent news items but also extensive background research and cross references related to the topics. If you haven't followed our LawBlog, see what the Library of Congress, other "blawgers", and CLLA members find so informative and noteworthy. You'll see a link on the right side of our home page or go to

<http://www.hamilton-co.org/cinlawlib/blog/default.asp>.



Technology-enhanced information delivery at CLLA doesn't stop with the blog. The website is supported by the tireless attention of Julie Koehne, Assistant Law Librarian, who also summarizes daily Ohio Supreme Court and court of appeals cases. Glenna Herald edits the Law Library's newsletter and keeps members up to date via email on a number of practice areas. Congratulations and thanks to Chuck, Julie, and Glenna for these services.

Member Benefits

All members have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for **up to 6 weeks** at a time

Access to extensive electronic databases from the Law Library, including **LexisNexis**, **Shepards'**, **CCH Omnitax**, **CCH Human Resources Group**, and **CCH Business Group** resources, **Hein Online Law Journals** and **Federal Register**, and over 70 **Aspen / LOISLaw** treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person;

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive **CLE seminars** throughout the year, on legal research and substantive topics

In addition, solos and members whose firm has a membership have **24 hour remote access** to Fastcase.com case law and Aspen/LOISLaw treatises

Tech Tip: Managing your email subscriptions

Julie Koehne, Assistant Law Librarian

Go to <http://www.hamilton-co.org/cinlawlib/interact/list.html> and click on "Manage your subscription."

CincinnatiLaw: The Cincinnati Law Library Association List

About CincinnatiLaw

This list is hosted for the members of the Cincinnati Law Library Association, to receive updates on recent legal news and information from the Association.

This is a private, broadcast-only list, and only members of the Association (including officials designated by statute) may subscribe on topics related to legal research and information in a variety of practice areas.

Not a member? [Join the Association today!](#)

To see the collection of prior postings to the CincinnatiLaw Archives. (The current archive is only available to the list members.)

Using the CincinnatiLaw List

You can subscribe to the list or change your subscription in the sections below.

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To unsubscribe from CincinnatiLaw, get a password reminder, or change your subscription options enter your subscription email address:

If you leave the field blank, you will be prompted for your email address

[CincinnatiLaw list run by jkoehne at cms.hamilton-co.org, gherald at cms.hamilton-co.org, mjenkins at cms.hamilton-co.org](#)
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[Overview of all mylist.net mailing lists](#)

After clicking on the "Manage your subscription" button, scroll down to enter your email address and click on the "Unsubscribe or edit options"

CincinnatiLaw list: member options for user i

In order to change your membership option, you must first log in by giving your membership password, you can have it emailed to you by clicking on the button below. If you click on the button and a confirmation message will be sent to you.

Important: From this point on, you must have cookies enabled in your browser, otherwise you will not be able to log in.

Password:

Unsubscribe

By clicking on the *Unsubscribe* button, a confirmation message will be emailed to you. This message will have a link that you should click on to complete the removal process (you can also confirm by email; see the instructions in the confirmation message).

You will need to enter the password that was sent to your email address when you first subscribed.

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Subscription Configuration

Changing your CincinnatiLaw Subscription Information

You can change the address that you are subscribed to the mailing list with by entering the new address. A confirmation email will be sent to the new address, and the change must be confirmed before it is made.

Confirmations time out after about 3 days.

You can also optionally set or change your real name (i.e. John Smith).

New address:

Again to confirm:

Your name (optional):

You can change the email address you subscribed with.

Unsubscribing from CincinnatiLaw

Turn on the confirmation checkbox and hit this button to unsubscribe from this mailing list.

☐ Yes, I really want to unsubscribe

You can unsubscribe all together, just make sure to put a check in the "Yes, I really want to unsubscribe" box.

Your CincinnatiLaw Password

Forgotten Your Password?

Click this button to have your password emailed to your subscription address.

Change Your Password

New password:

Again to confirm:

☐ Change globally.

Your CincinnatiLaw Subscription Options

Current values are checked.

Mail delivery

Set this option to *Enabled* to receive messages posted to this mailing list. Set it to *Disabled* if you want to stay subscribed, but don't want mail delivered to you for a while (e.g. you're going on vacation). If you disable mail delivery, don't forget to re-enable it when you come back; it will not be automatically re-enabled.

☒ Enabled

☐ Disabled

☐ Set globally

Which topic categories would you like to subscribe to?

- ☐ Case Law [\(Details\)](#)
- ☐ Criminal [\(Details\)](#)
- ☐ Employment [\(Details\)](#)
- ☐ Estates and Trusts [\(Details\)](#)
- ☐ Family Law [\(Details\)](#)
- ☐ Intellectual Property [\(Details\)](#)
- ☐ Newsletter [\(Details\)](#)
- ☐ Pension Benefits [\(Details\)](#)
- ☐ Real Estate [\(Details\)](#)
- ☐ Tax [\(Details\)](#)
- ☐ Journal Watch [\(Details\)](#)
- ☐ Torts [\(Details\)](#)
- ☐ Workers' Compensation [\(Details\)](#)
- ☐ Send Nothing [\(Details\)](#)
- ☐ CLL Test [\(Details\)](#)

You can choose to subscribe to all the different categories listed to the right. If you only want the Newsletters, click the box next to the category.
NOTE: If no boxes are checked you will get everything listed.

Set Digest Mode

If you turn digest mode on, you'll get a single message (usually one per day but possibly more on busy lists), instead of singly when they're sent. If digest mode is changed from on to off, you may receive one last digest.

☐ Off

☒ On

Get MIME or Plain Text Digests?

Your e-mail program may or may not support MIME digests. In general MIME digests support extra features, like a table of contents for the messages in the digest - by reading them, select plain text digests.

Get password reminder email for this list?

Once a month, you will get an email containing a password reminder for every list that you are subscribed. You can turn this off on a per-list basis by selecting *No* for this option. If you select *No*, no password reminders for all the lists you are subscribed to, no reminder email will be sent to you.

When you are finished making any changes click on the "Submit My Changes" button.

CincinnatiLaw list run by jkoehne@cms.hamilton-co.org, gherald@cms.hamilton-co.org, mjenkins@cms.hamilton-co.org
CincinnatiLaw administrative interface (requires authorization)
[Overview of all mylist.net mailing lists](#)

*The Law Library
will be closed
President's Day,
February 18, 2008*



February 2008 Law Library Newsletter

INSIDE THIS MONTH

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ADDRESS CORRECTION REQUESTED

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